

The CASE of

B. Woodroffe, Doctor in Divinity, and Katharine Marbury, Mary the Wife of the said Doctor, and Elizabeth the Wife of Gilbert Thacker, Esq; Co-heirs of William Marbury, Esq; deceas'd.

Relating to the Sale and Purchase of the Manor of *Marbury*, and other the Estates of the said *William Marbury*, deceas'd.

In Cancel. Inter Georg. Torbuck & al. Quer. Et Katharinam Marbury & al. Defts.

DR. WOODROFFE having been certified the best Bidder for the said Estates, at 19000 *l.* and thereupon admitted Purchaser by the Order of *May 25. 1705.* by which it was order'd, *That the said Doctor should pay in to the Master 2000 l. before the end of Whitsun-Week, and the remaining 17000 l. in three Months, and to forfeit the said 2000 l. if he did not pay in the remainder in the time.*

The Notice given by the Mortgagees was this:

“**T**HE Mortgagees intend to move the Court on *Friday*, to discharge the Order of *May the 25th*; which was, that *Dr. Woodroffe*, who had bid 19000 *l.* for the Estate, should before the end of *Whitsun-Week* pay in 2000 *l.* into Court, and the remaining 17000 *l.* in three Months, and to loose the 2000 *l.* if he did not perform it; and that the Order being discharged as to the 19000 *l.* bid by the Doctor, *Lord Rivers* might be admitted at 18500 *l.* Dated *June 6th, 1705.*”

THE Counsel for the Mortgagees urged the many delays there had been in the Cause, charging all upon the Doctor, [tho' great part was transacted several years before the Doctor was acquainted with the Family, whose the Cause was; and what was since transacted, never receiv'd any the least delay from him;] and then proceeded to argue against the Doctor's being the Purchaser, from his disability to perfect the Purchase; which they urged from his having failed in a former bidding, having then laid down 1000 *l.* and lost it for not proceeding.

To

To which the Doctor's Counsel rejoin'd, shewing the Reason of the Doctor's not complying with the former Bidding, from the hard Conditions which were then put upon him, which no Counsel could advise him to comply with, *viz.* of laying down 18000 *l.* in Court, without any Title of the Estate made to him, and to be restored to the Possession of the Estate; which being great part of it in Reversions, would not have answer'd the Interest of the 18000 *l.* or of laying down the whole 23000 *l.* in Specie, and then to have a Title; which would have been in effect to lay down 28000 *l.* for as much as there was 5000 *l.* which he was before allowed by the Court to detain in his hand, as being due to him from the Estate, for what of the Debts he had paid, or laid out in lasting Improvements, with the 1000 *l.* by him laid down in Court; all which must now have been wholly postponed, and the whole 23000 *l.* paid in.

What was next applied to, was the matter of the Order, by which the Doctor was order'd to pay in 2000 *l.* before the end of *Whitsun-Week*, that was, in eight daystime, and 17000 *l.* more in three Months, or to loose his 2000 *l.* if he did not perform it.

To which the Doctor having consented at the former Hearing, and having paid in his 2000 *l.* in the time set by the Court for it, and being prepared to pay in the 17000 *l.* in three Months, his Counsel urged that he might be confirm'd in the Purchase.

Against which the Lord *Rivers's* Counsel urged, That the Lord *Rivers's* 18500 *l.* was more than the Doctor's 19000 *l.* he being ready to lay down his 18500 *l.* whereas the Doctor's 17000 *l.* part of his 19000 *l.* (for 2000 *l.* was already paid) was not to be paid till three Months end.

But the Order of *May* the 25th being insisted on by the Doctor's Counsel, and the Certificate of the Master being produced to prove the Doctor's having paid his 2000 *l.* and he being ready and able to pay in the 17000 *l.* in three Months. — The Lord Keeper said, that he was tyed up by the Decree, which was for the sale of the Estate to the best Bidder, and that he that bids most is the best Bidder, and the Doctor having bid most, he is the best Bidder; and therefore having paid in 2000 *l.* which he was order'd to pay before the end of *Whitsun-Week*, if he would bring in the remaining 17000 *l.* in three Months, and consent to loose the 2000 *l.* if he did not perform it, he must be confirm'd. — Whereupon he ask't the Doctor, whether he would consent to loose the 2000 *l.* if he did not perform it; the Doctor said, his consent was bound up in the Decree of the Court: But his Lordship again ask't the Doctor, do you consent, then the Doctor said, he did submit to the Terms, he accepted the Conditions, he did consent.

And here the Motion as to his being Discharged, and the Lord *Rivers* his being Confirm'd at 18500 *l.* ended, and the Doctor was Confirm'd.

But the Counsel on the other side not acquiescing, said, if that noble Lord on the Bench (meaning the Earl *Rivers*, who was there in Court) would bid the same the Doctor had, and pay down the Money presently, then undoubtedly, he was the best Bidder, and the Interest of 17000 *l.* for three Months being above 200 *l.* he would be so much a better Bidder than the Doctor, notwithstanding the Doctor had actually paid in his 2000 *l.*

But

But to this 'twas fully answer'd, that the 2000*l.* being part of the Purchase-Money, the Bargain was thereby confirm'd to the Doctor, and could not be alter'd: He had perform'd the Terms, and ought to be confirm'd in the Possession of the Right that thereby accrued to him; besides what they called a better Bidding with respect to the 200*l.* Interest, could not be so in any construction: For the 2000*l.* paid down by the Doctor, would abate some part of the pretended Interest of 200*l.* and as for whatever Interest would be abated for the present Payment, would be of no avail to the Estate, or Creditors; it being what must have lain dead, whatever were paid in at present, the Mortgagees accounts being not brought in, or stated, nor the other Debts liquidated, nor yet decreed by the Court, what Creditors, and in what order or proportion every one should receive of the Purchase-Money, when paid in: Nor after all did the Lord *Rivers* presently pay down his Money, nor was he order'd so to do.

But however the Project being thus laid, the Court presently took it, and my Lord *Keeper* said, I don't hear that noble Lord say it, ('twas with reference to his bidding 500*l.* more to make him an equal Bidder with the Doctor) I would hear my noble Lord say it, and repeating it again, I wish I could hear my noble Lord himself say it; and then it was ask'd, shall my noble Lord have the Estate, if he bid the 500*l.* — and proposed to two of the Mortgagees (who were present in Court) and to the *Solicitor* for three of the Bond-Creditors, what say you, shall my noble Lord have the Estate, if he bid it? as also to one Colonel *Ryce*, (who pretended to act for Mrs. *Andrews*, one of the three Bond-Creditors for whom the foresaid *Solicitor* appear'd) what say you Sir, shall my Lord have the Estate, if he bids the 500*l.* more? and these giving their consent: The Doctor several times interposing, claim'd the right of his Bargain, saying, he did not see any reason, why the Lord *Rivers* should be allowed thus to bid at all, 'twas against all the Rules of Commutative Justice, nor could the Lord *Rivers* by any Rules of Law, take his Right from him; there was no reason he should take his Bargain from him, and thus bid on his head: To which the Lord *Keeper* reply'd, why did not you bid on my Lord *Rivers* his head: To which the Doctor answer'd, no my Lord, I overbid him, by the Rules of all Auctions I had a right to over-bid any other Bidder: There was notice of sale to all in general, the best Bidder was declared to be the Purchaser, I was the best Bidder, and I had right to bid; for if I lost my 1000*l.* in the former Bidding, the Amercement I had suffer'd, restor'd me to my Right, I stood equal with any other Bidder, and thereupon the Bargain was made and confirm'd, and ther's no room for any other Bidder.

Then the Lord *Keeper* over-rul'd me, and ask't my Lord *Rivers*, whether his Lordship would bid the 500*l.* Upon which his Lordship stood up and said, Forasmuch, as he had provided his Money he would give the 500*l.* Upon which the Lord *Keeper* said, There was no doubt now but that noble Lord was the best Bidder, and he should have the Estate.

Whereupon

Whereupon the Doctor declared again, that he could not submit to depart from his Bargain; Yet if there must be a new bidding, he bid a 100 *l.* more than the Lord *Rivers*, and the Court seeming to slight that, he added, I bid 500 *l.* more. And there the matter rested, the Lord *Keeper* declaring for the Lord *Rivers*.

However the Doctor desired he might be farther heard, and taking notice of what had been said by the Court, as grounded on the consent, that had been seemingly given by the Creditors, he thus proceeded.

My Lord, I do observe there are several sorts of Creditors before the Court, first there are the Mortgagees, whom your Lordship now, and formerly declared to be safe on all Events, and what your Lordship hath said to them is grounded on good and firm Reasons: Other Creditors there are, who are Bond-Creditors, for three of whom their Solicitor here appears, and from another quarter of the Court, one of the Counsel declares himself to be for six other Creditors; who those are I know not, but they all chime in for my Lord *Rivers* to be allowed the Purchaser.— But, my Lord, here hath been a Petition in Court, which hath been twice offer'd for a great, a much greater number of Creditors, and their Debts are considerable, I have the Petition in my Hand; and besides these, there are another sort of Creditors, and those the most considerable of any, the Sisters of *William Marbury*, the Co-heirs, so they are called in all Pleadings, (a vain Name as things now stand.) But Creditors they are, and have a demand on the Estate of above 14000 *l.* and as to my own demand in particular, who am one of them in the right of my Wife, for what is due to me in her Right, and what I have paid of the Debts of *Thomas* and *William*, and for Building, Repairs, and lasting Improvements, it is above 7000 *l.* which must be in a manner lost if the Estate be snatcht from us.— Now all these joyn with me in asking leave to oppose the sale of the Estate to Earl *Rivers*.— And I trust, my Lord, where an Estate is Decreed to be Sold for the Benefit of Creditors, and those related to the Estate are the greatest Creditors, by no Rule of Law, or Equity shall a Stranger be allowed to come in, and take it away from them, who are so far Interested in the Estate beyond the present sale.

(*Deus facit Heredes*)

My Lord, it is God, who makes Heirs and they have been always consider'd in such Cases, nor have they ever been denyed in this Court to Purchase or Redeem their own Estates.

My Lord, We are within the Rules of Justice and Equity, and having such a long Debt beyond the Purchase-Money, cannot see how this Court, a Court for the Relief of the Distressed, can contrary to what hath been the known Practice of it, Decree the Estate from us.

If the other Creditors had said, Forasmuch as we must be great Losers, if the Estate go at 19000 *l.* We our selves desire to be admitted Purchasers, we'll pay the 19000 *l.* for it, and if there be a remainder, we'll make the best of it to help out our Losses, Justice would certainly have decreed it to them.

But as the Case stands, they are here quite turn'd against themselves, many of them are so, they come into Court, and say, we had rather have 18500 *l.* than 19000 *l.* This is their Motion this Morning; but if their Sentiments be contrary to the common

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common Reason of Mankind, must therefore the Co-heirs related to the Estate, and who have much greater Demands, than those Creditors, who thus give up themselves to the Interest of a Stranger, must the Co-heirs be denyed the Equity, that would have been denyed to none other?—I hope, my Lord, such new Reason as these Men Act by, much less such new Rules of Justice will never be advanced upon us; but that being so great losers, as what our Debts rise beyond the Purchase-Money, if there be any help from the Estate, we shall be indulged in so natural a part of Equity, as our Cause bespeaks. It is not my Lord Rivers his giving the same Money can make him an equal Bidder with me, till he bids all that I accept the Estate for: There are many thousands of Pounds lie behind the Bidding, and all in the Estate, and could a Bidder be found, who would rise to that Price, every Penny would be our due; and in construction of Equity, none can be an equal Bidder with me, till he bids to what the Estate should fully answer to me, and to the other Co-heirs concern'd with me.

And therefore I cannot but humbly request your Lordship, that I may be confirm'd in my Bargain, for which I have paid part of the Money, have paid it in too as a Pledge, which if that were to be lost must advantage the Creditors, to say no more, ten times as much, as what these Gentlemen have so falsely calculated with reference to the difference there is between the present payment and the three Months time, in which I am to pay the 17000 l. Nor can I therefore but most humbly request my Lord Rivers may not be admitted Purchaser, I humbly plead my Bargain, I humbly demand my Right, I cannot depart from it.

However the Court was pleas'd to order it to be entred for my Lord Rivers. Upon which 'was reply'd, 'Twas the snatching away our Inheritance, 'Twas Naboth's Vineyard, and there was one above who would judge right.

Note, In the Pleadings, one of the Counsel for the Mortgagees begun to reflect upon the Doctor as being a Prisoner in the Fleet, which the Doctor's Counsel desired him to forbear for their own Honour, least they might hear of their own Contrivance, when an Affidavit which was in Court, should be read: On which the Lord Keeper said 'twas a very ill or foul thing, if 'twere so. But however the Affidavit was stifled, and neither opportunity or leave given to read it, tho' several times hinted by the Counsel. Nor was the Debt for which the Action was, contracted by the Doctor, but due from the Estate in question, and the Arrest contrary to the directions of him the Doctor, in whose name the Action was made use of, to hinder him in his Purchase, as it since sufficiently appears.

Note, The Court at the end of the Cause, i. e. the Master of the Rolls propos'd, that the 500 l. which was by my Lord Rivers his Bidding in Court rais'd upon the Doctor, should be given to the Doctor: But the Doctor signified no compliance with it, and my Lord Keeper said he could not order it, but left it to the Creditors, who had mov'd for the Lord Rivers to be confirm'd Purchaser at 18500 l. (who had now bid 19000 l.) to take two days to consider, whether they would consent, that the Doctor should have the 500 l.

What

What Mrs. Katharine Marbury had prepared to offer to the Court, in behalf of herself, her Brother, and Sister *Thacker*, and her Sister *Woodroffe*, but being denied leave to speak it, deliver'd into the Court in Writing, and left it on the Table.

July 10. 1705.

My Lord,

I Humbly desire to be heard for my self, my Brother, and Sister *Thacker*, as also for my Sister *Woodroffe*; for tho' the Doctor her Husband be concern'd in the Sale, yet 'tis we who are concern'd chiefly in the Estate to be sold; the Consequences whereof being so fatal to us, as we have the deepest Sence thereof, so we hope we have as deep reason at this time to urge against it.

And first, we had no notice of the Mortgagees Motiou of *June* the 8th, which, as we have been told, was to discharge Dr. *Woodroffe*, who had bid 19000 *l.* and confirm Earl *Rivers*, who had bid only 18500 *l.* The reason of such a Motion we do not understand; better Arithmeticians; than we poor Women; may; but we never yet understood that 18500 *l.* was more than 19000 *l.* But be it what it will, we say, we had no notice of it, and therefore humbly Conceive, are not bound up in the Issue of that day's Motion; which being turn'd afterwards to take away the Estate from one of our Husbands, at the same price he had bid, and no other, and that, after he had paid in 2000 *l.* according to the Order of the Court, and was to forfeit it, if he did not pay in the remainder of the Purchase Money in the time appointed by the Court, neither doth that come within the apprehension of us poor Women; how Men may reason herein, we leave to their stronger Judgments.

But as we had no notice thereof, so neither do we see how at present, at present, I say, any actual Sale can at all be made; whatever reason there be for a Decree for the Sale, none there is, it should be yet done: And the Reason for this, I take out of the Decree it self, which, as I've been inform'd, is to this purpose; *That the Estate should be sold to the best Bidder; and that either in the whole or in parcels; that the Master approve of the best Bidder; and that all Accompts be stated, and all Persons examined upon Interrogatories.* Now if Accompts are not stated, nor all Persons have been Examined upon Interrogatories, what occasion is there for an actual Sale? The Accompts to be stated, and the Interrogatories to be answer'd, walking along with the Decree for the Sale, and being what in reason and nature ought to precede the Sale.

As we had no notice, as, if we had had notice, we should have been able to shew there was no reason for a present Sale, a Sale to precede all Accompts and Interrogatories; so neither is what Earl *Rivers* bid, and the manner in which he bid it, to be admitted.

For, First, as to what he bid, it is so much below the true value of the Estate, (the value whereof hath been sworn in Court to be worth above 30000 *l.* and there hath been actually 23000 *l.* bid for it, and that by one who must be supposed to know something of the value it,) I say, what my Lord hath bid, is so much below the true value of the Estate, that it would not be reasonable to make so hasty a Purchase at such a rate; there ought certainly have been some time to consider

consider of the difference between 23000*l.* & 19000*l.*——— Tho'tis easie to his Lordship to leap into such a Purchase, yet 'tis not so easie for us to be in a moment thrown out of our Inheritance, and sent to seek our Bread at his Door, who can so unmercifully shut our own Doors against us. ——— *My Lord*, We humbly conceive, 'tis not a value at which a Court of Equity should be willing to see such an Estate go.

This as to what my Lord bid, but then as to *the manner* in which he bids it, that is, so as to take it away from one of our Husbands, who if any one ought to have found favour, as bidding for us, who, as Coheirs, have something of a Title, which none else can have, to the Remainder of our Inheritance; but as Creditors on the Estate, and that to a higher value than any other Creditor, can never be recompensed from the Estate, (tho' computed to its highest value,) beyond what it is indebted to us. But besides, there is something else in *the manner* in which my Lord's Bidding was, which no Court of Equity or Justice can indulge; the Person (one of our Husbands) from whom he hopes to ravish the Estate, is to be disabled and disparaged by an Arrest, in the very nick of time when he was to perform his Bargain, and pay in his Money, and all this by the contrivance of such Agents who hop'd thereby to make all sure to their Lord. *My Lord*, This hath been done; an Affidavit hath been in Court to prove this; And whether this be just, whether the Favour of this Court ought to follow such Actings, I humbly leave to be considered.

But because it hath been intimated, as if it were by the consent of the Creditors, that Lord *Rivers* was invited to the Purchase: I do not see, *my Lord*, how their consent, if my Lord had had it, operates in this Case; for which I ask leave to observe to your Lordship, who they are, that give this consent? (1.) The Mortgagees, they who declare that 18500*l.* is more than 19000*l.* a great proof of their Understanding! they too who can think it just to take away another's Bargain, to gratifie him to whom they would give the Estate; a great proof of their honesty! and they too, who when they shall have thus snatched away the Estate from him, who should pay the Debts from the Estate, declare (Sir *Sturgesham Masters* did it in Court) *That they will not be contented with what is so raised, if it pay not their whole Debt, but that they will still expect a farther Payment from the Coheirs*; a great proof of their Equity! first to give away the Estate for nothing, at least for so low and inconsiderable a value, and then require from us, what the Estate would have paid, if not so given away; the Mortgagees too, let me say it, because I've heard the Court say it, who are safe on all events, have the Estate in Possession to pay them their Interest, and can never come short from it of a satisfaction for their Principal. (2.) *Keigwin*, and his Clients, they likewise declare their consent; but their consent is none; for they were Brib'd for it; they have taken 600*l.* as Press-Money to List them on my Lord's side, and now they desert the Cause, which, as I'm told at the last Motion before they fought for. (3.) As to other Creditors, whose consent is pretended, I'm told, they are those for whom *Cottingham* by Mr. *Archerly* consented; but they would have done well to shew their Authority for it: Their Principals are in the Country; and how those who by Petition several of them so lately appear'd against Lord *Rivers*, should in so few days change their minds, and send their consent hither, is not easie to imagine, unless they had had some Pigeon-Carriers to convey it; they ought to shew their Authority. But all the other Creditors are against it; the Petitioners, who are 15 or 16, Mr. *Vere*, (we have his hand for it) and we the poor Coheirs: So that we humbly conceive, on no account Lord

Rivers

Rivers ought to be admitted Purchaser. Besides, we ask leave further to offer to your Lordship, That what *Earl Rivers* hath done in bidding, is contrary to the Decree; the Decree is, *That the Bidding shall be before the Master, and the Master to certify the best bidder.* *Earl Rivers's* Bidding was not so; 'twas here in Court, and without any notice, and cannot for that Reason be a Legal Bidding: For however the Court makes the Decree, and can give Birth to what Orders it pleases, yet the Court is as much bound up by the Decree (your Lordship was pleased to declare it so, with reference to Dr. *Woodroffe's* being the best Bidder, and therefore to be admitted Purchaser, however the matter is since turn'd) as those for whom it is made; and till that Decree or Order be Counter-Decreed, or Counter-Order'd, hath Authority to Act for it, but none against it. That Lord *Rivers* should come into Court, and pursuant of a Motion which had nothing of that matter in it, stand up and Bid, who was, or could be provided for such an Emergency? However, as I am told, even then there was another Bidder appear'd: The Doctor likewise bid first 100, and then 500*l.* — 500*l.* my Lord, is Money, too much for the poor Coheirs to loose, and we must still so far join with the Doctor, as to desire that if there were to be a new bidding, the 500*l.* more may be accepted; that as his 19000*l.* was more than *L. Rivers's* 18500*l.* (notwithstanding the new Arithmetick of some at the Bar) so his 19500*l.* may still be thought more than Lord *Rivers's* 19000.

This as to the Lord *Rivers's* Bidding, which I trust in no construction of Law or Equity ought to be accepted: I have shew'd your Lordship, (pardon the weakness of my Sex) besides so many other Defects, Corruption, and Bribery in the Case, which alone destroys all Right, and is what he who gives, as well as he who takes, hath been always equally obnoxious for. But I have still a farther Motion to make in this Affair; and that is, what surmounts whatever else hath been bid, *That he who bid the 23000*l.* may still be admitted at that price:* For this I have the concurring Petition of many of the Creditors; and if he will be perswaded, I speak not this to abate the Right he hath in his Bidding of 19000*l.* first, and afterwards 19500*l.* against *E. Rivers*: If he, I say, will be perswaded for the good of the Creditors, to give the said 23000*l.* as the Creditors Petition he may, I hope 'tis what the Court cannot well refuse, especially if in the mean time (whatever time the Court will give him to do it in) he will pay the Interest of the 23000*l.* and advance the same, he only having the growing Profits of the Estate to reimburse him, and over and beyond the said Interest so advanced, will be content to forfeit 500*l.* if in the time allotted he do not effect it. If this be consented to by him, 'tis what will save all Interests; to the Mortgagees, to the Bond Creditors, and to us the Coheirs; and we cannot see why it should be rejected; unless the Creditors, after all, shall better like of it, (the Estate being judged to be of greater value,) to have it sold in parcels; which is part of the Decree, and is thought to be the best way to make the most of it; if so, let one in behalf of the Mortgagees, one in behalf of the Bond-Creditors, one in behalf of the Coheirs be empower'd to make Sales, and the Money raised be paid in as the Court shall direct.

If this, or the former Proposal for the 23000*l.* be accepted, then in the mean time, may all Accompts be settled, and Interrogatories answer'd, and the precedence of those, who shall receive the Money, be Decreed, and so every one, without further dispute, receive what shall be so Decreed.